CINCINNATI BAR ASSOCIATION

1872-1922

FIFTIETH ANNIVERSARY

ALPHONSO TAFT

President of the Cincinnati Bar Association

1872

PROVINCE M. POGUE

President of the Cincinnati Bar Association

1922

CINCINNATI BAR ASSOCIATION

1872 - 1922

CELEBRATION OF

FIFTIETH ANNIVERSARY

AT

HOTEL GIBSON

WEDNESDAY, APRIL NINETEENTH
NINETEEN TWENTY-TWO

THE PRESIDENT
PROVINCE M. POGUE
PRESIDING

CINCINNATI
PUBLISHED BY THE ASSOCIATION
1922

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1872

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ALPHONSO TAFT

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1922

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Committee Appointed Under Resolution of January 17, 1922, *as to Recommendations in Regard to Judicial Office*

BURTON B. TUTTLE, *Chairman* — W. A. GEOHEGAN
MURRAY SEASONGOOD

Committee of Six on Qualifications of Candidates for Judicial Office as per Resolution of January 17, 1922

JOEL CLORE — FRANK H. KUNKEL
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GEORGE E. MILLS — BEN. B. NELSON

MENU

CRAB FLAKE COCKTAIL

CELERY SALTED NUTS OLIVES

POTAGE MINESTRA MILANAISE

CHEESE STRAWS

GRILLED BREAST OF CAPON ON TOAST

NEW POTATOES BROWNED IN BUTTER

CROUSTADE OF FRESH VEGETABLES

HEARTS OF LETTUCE

EGG DRESSING

MOUSSES OF FRESH STRAWBERRIES

EASTER CAKES

CAFE NOIR

CIDER NATURAL CIGARETTES PERFECTOS

SPEAKERS

HON. CORDENIO A. SEVERANCE
President American Bar Association

HON. CURTIS E. McBRIDE
President Ohio State Bar Association

HON. JAMES G. JOHNSON
Justice of the Supreme Court of Ohio

HON. PAUL HOWLAND
HON. EDWARD COLSTON
HON. JUDSON HARMON
HON. CHARLES B. WILBY
HON. MORRIS L. BUCHWALTER

ADDRESS OF
PRESIDENT POGUE

Before the formal meeting of the Bar Association begins, I wish to direct your attention to the fact that since our last meeting in January we have lost one of the ablest members of our bar, one of the most courageous public officials, and one of the most lovable of men—a predecessor in office and President of the Cincinnati Bar Association. I, therefore, ask that the members of this Bar arise and stand in respectful reverence on account of the death of John Galvin. (All members arose and remained standing for a few minutes.)

We will now proceed to the order of business of the meeting. I hope the reports of the Committees will be short. There is much to be taken care of this evening; we are going to hear from our fifty-year members, and I trust there will not be a single person leave this room until we have heard of or from every one of them. I know that all the members of the Bar present appreciate what is proper on this occasion.

The first in the order of business is the reading of the minutes. (Upon motion duly made, seconded and carried, the reading of the minutes was dispensed with.)

Here followed the reports of the various committees.

President Pogue—Is there anything else to be introduced under the subject of miscellaneous business?

Mr. Allen (Alfred G.)—There lies tonight at Christ Hospital, in this city, a former Judge of our Common Pleas Court, a member of this Bar Association, Honorable Moses Wilson; he is very ill and helpless, and I would like to make a motion that we extend to him our felicitations on the meeting of the Association on its fiftieth anniversary, and let him know that we still remember him.

Mr. O' Hara—I second that motion.

President Pogue—I might add that Judge Wilson was a former President of this Association. (The motion was put and unanimously carried.)

President Pogue—If there is nothing else under the subject of miscellaneous business, we will now proceed to the real order of business of this meeting.

A little over fifty years ago there was organized in this city the Cincinnati Bar Association. The original record is in the possession of the secretary of this Association. It will be a pleasure to every member present, to take the time, as a matter of interest, to look at the names on the original roster. When I view them, and see the types of men that started in to accomplish what I feel this Bar has always maintained, the highest position in the profession in the United States, we can readily see why its foundation was so important, and why we have been so remarkably influenced by the type of men who founded that organization.

Out of in the neighborhood of one hundred members, as nearly as I can find from the records, who constituted that organization in the first year of its existence, there are living today nineteen members. The oldest is Mr. E. P. Bradstreet, nearly ninety-three years of age. He is present with us tonight (applause). Mr. Bradstreet, I would like for you to stand.

(Mr. Bradstreet arises.) (Applause.)

I want the younger members of this Bar, like Governor Harmon (laughter) and Robert Fulton, to know that at the last term of court, Mr. Bradstreet tried a case in Judge Caldwell's room. From what the Judge tells me the opposing counsel had no chance, for as soon as they looked at Mr. Bradstreet the jury concluded that whatever was right or wrong in the case Bradstreet had to win, and so he won. (Laughter and applause.)

I wish to direct your attention to the fact that of the original roster of nineteen, ten are present here tonight. (Applause.) Perhaps some of the younger members of this Bar do not know all of these men, and I would, therefore, like to have them arise as I call their names. Four of those men are at this table, sitting right in front of you. They are Governor Harmon

(applause), Judge Buchwalter (applause), Charles B. Wilby (applause), and Edward Colston (applause). The others are E. P. Bradstreet, Judge Clement L. Bates, Charles H. Stephens, Sr., W. C. Cochran, Robert Fulton, and W. H. Mackoy, seated at a table in front of the speakers of the evening. (Applause.)

In the formation of this organization the principle, which was predominant in its foundation, was embodied in this clause of the Constitution:

> "The objects of the Association are, to maintain the honor and dignity of the Profession of the Law, to cultivate social intercourse and acquaintance among the members of the bar, and to increase their usefulness in aiding the administration of justice and in promoting legal reform. But it shall not be a part of the business of the Association to discuss, or to take action upon questions of politics or of religion."

If any one will read the minutes through from that time to this, he will find that the provisions of that part of the Constitution have been fought over as many times as the Volstead Act. (Laughter.) Still, they upheld things in those days that the Volstead Act prohibits.

At one of the early sessions of this Association there was a very bitter debate between George Hoadly on one side and Rufus King and Mr. Stanbery on the other, as to whether they should have anything of an intoxicating nature to drink at meetings of the Association, and I might say that the spirit of Mr. King prevailed and the wets carried it.

Now, we come to the consideration of the main part of our program, to listen to those who have very kindly consented to address us on this anniversary. I am not going to attempt to introduce them with any formal speech, because, with the exception of two or three, they are residents of our city, and well known to you.

The one who is first on the list of speakers tonight has not been able to be here on account of illness. I have this wire from him, Mr. Severance, President of the American Bar Association, which I would like to read to the Association:

St. Paul, Minn., April 17, 1922.

Province M. Pogue,
First National Bank Building, Cincinnati, Ohio.

It is with infinite regret that I am compelled to wire you that I cannot be in Cincinnati Wednesday night, having been ill in bed since Saturday morning, and being prohibited by the doctor from attempting to get out in time to reach your dinner. This is very exasperating, but unavoidable. Please convey to the members of your association the greetings of the American Bar Association, which I had expected to present in person. The Cincinnati Bar has contributed to the nation so many distinguished jurists and lawyers that the mere recital of their names would be tedious. The exalted positions now filled by members of your Association demonstrate that the present generation is maintaining the high traditions of your Bar. Am writing you more fully.

C. A. SEVERANCE.

I now take pleasure in introducing to those who have not had the good fortune to hear him, Honorable Curtis E. McBride, President of the Bar Association of the State of Ohio. (Applause.)

ADDRESS OF
HON. CURTIS E. McBRIDE

Mr. President, Ladies and Gentlemen of the Cincinnati Bar Association:

It is a pleasure for me to be here tonight, and I bring you the hearty greetings and felicitations of the Ohio State Bar Association on this, your most auspicious occasion.

The Cincinnati Bar Association, as has been said, has been composed of eminent lawyers, and you have fulfilled the object of your Association. These associations are very pleasant; we get together and they sweeten the bitterness and the hardships of the trial, and they help us to endure and sustain us in the arduous toil of the profession.

The Bar Association of the State of Ohio, and the local Bar Associations throughout the State, are doing more and better work at the present time than they have ever done before throughout the State. And there has been an added interest to the work of the State Association that has been largely due to the splendid work done by the Cincinnati Bar Association and the Cleveland Bar Association in the northern part of the State. The great trouble with the lawyers heretofore has been that they have been a good deal like the Irish; the Irish fight everybody's battles but their own, and they are doing that now. Then when the war has ceased they come back and start in to fight among themselves. And that is what we have done; the lawyer has fought everybody's battles, until they have fought themselves out of some business that they ought not to have fought themselves out of. We go before the State Legislature and ask for some legislation, and we get scant consideration; heretofore we have had scant consideration, because there has been no united, concerted action behind us. This last winter we had a matter up before the legislature that passed the House by a very large vote, and it was unanimously recommended by the Judiciary Committee of the Senate, and then it

fell into the hands of what is known as the Jitney Committee. I don't know what that is, but it is a new committee originating up there lately, and there it stayed—we couldn't get it out, and when the chairman was appealed to and told that the State Bar Association was back of it, he wanted to know who the State Bar Association was anyway. (Laughter.)

Now, every profession in the State of Ohio is organized. The doctors are organized to about ninety-seven per cent of their membership, while the State Association of the lawyers is organized to about thirty-seven per cent. So you can readily see why we haven't the influence in the State Legislature that we ought to have; but, as I said before, there is a better feeling over the State of Ohio; there is a better support to the State Bar Association.

I was very much pleased in reading Bryce's new book on Modern Democracies, wherein he says there has been a great advance in the standing both of the bench and the bar throughout the United States in the last thirty-five years, and then he gives his reason. He said it is due to the activity and the work of the State and the local bar associations throughout the country. So you see we have a great work to do; but it is just beginning; there must be a better and a more earnest co-operation throughout the State of Ohio, and among the lawyers than there has been heretofore.

Now, last winter there was some legislation introduced with reference to the incorporation of the Bar. Immediately a hue and cry went up from the lake to the river, that the lawyers had some iniquitous scheme before the legislature that ought to be killed. The newspapers played it up and ridiculed it, and everybody who had an organization of their own was against it. It was a good deal like the Irishman who landed on an island, and after getting the salt water out of his eyes, he asked them what kind of government they had, and was told none at all, and he said, "Well, I am 'agin' it." So every organization in the State of Ohio was against everything that the lawyers wanted, although there has not been an organization in the State of Ohio but what has asked some lawyer at some time to

aid and assist them before the legislature in getting their measures through.

I hope to see that measure, or some measure like it, enacted into law; whether that is the best bill or not I am not here to say, but it is a start; it is a basis for discussion, and instead of saying, "Well, I am opposed to that, I will have nothing to do with it," we ought to take it up in our local Bar Associations and our State Bar Association, and work out something which will be beneficial. Let us regulate our own profession, and not be regulated by some other profession, or by a lot of people who haven't any profession, but a desire to regulate other people's business. That is one thing that I hope will be enacted in the near future, some legislation along that line; but as I say, whether that is the right law or not, I don't know, and I don't pretend to say.

Now, great interest has been taken recently in the higher education of the Bar; the State was represented by delegates at the conference that was held in Washington recently; your Association was represented, the Cleveland Bar Association was represented, and quite a few of the local Bar Associations in this and most of the other states sent representatives to Washington. There was a great interest manifested in that question at that conference; and it is a great problem. Formerly the lawyer in the community was regarded as an oracle, he was looked up to, he was considered a leader of thought in the community where he lived. But in latter years we have lost out; today the lawyer does not occupy the place that he did twenty-five or thirty years ago, as the leader of thought in his community. This loss of prestige is largely his own fault; he has stood silently by and permitted people to cast slurs on his and our profession without resenting it, he has permitted himself to be thrown into the background; other organizations, other societies have come to the front; other men have taken the place of the lawyer as the leader of thought in the community; but he is coming back, he is resuming his place more and more. If I may be pardoned for reference to my own Bar Association—our local Bar Association up there. We started five years ago and we held quarterly meetings, and at every quarterly meeting we have a

speaker on some vital subject, and we have invited in the public. At first we had about ten or twelve outsiders come in out of mere curiosity; but now we have about a hundred outside people, who come in to listen to our discussions. I think the lawyer is, to a large extent, regaining his station as the leader of thought in his community. And then we decided to hold luncheons; that is, we would meet at luncheon, and we held them twice a month. When we started out with those luncheons it was most difficult for two lawyers to sit down in peace together; knives and hatchets were very much in evidence. But that is all done away with. We try our cases differently now; we can now sit down during the trial of the case and try it without trying the lawyer. This has all been brought about by our social amenities, by these semi-monthly luncheons that we hold. At first we started out with only a few, but now there isn't a single member of the Bar, hardly, but what attends these luncheons, and is glad to do it. So through that we have cultivated a feeling of good fellowship, and the lawyers throughout the State are doing it.

I feel that the lawyers are regaining their old-time position.

Now, I didn't come here to make a speech tonight, I didn't expect to be on the program; I came down here simply to bring you the greetings and felicitations of the State Bar Association, and then to listen to my distinguished friends who are to follow me on the program.

Now, we talk about unrest throughout the country. We need an educated bar for the purpose of directing correctly the public mind. The lawyer, trained in his profession, is the one that can do that; he is a creative power in his community to hurl back the waves of unrest, to aid in stopping violations of law, to bring to task those who look upon lawlessness with too much levity. It is the lawyer's duty to stand forefront against anything of that sort.

We all have read history; we all have seen in the old democracies, when the bar became corrupt and degenerate, and when the people lost confidence in the judiciary, they went upon the rocks, they went to ruin. But I have no such fear as that for this country; this country will live, this country will prosper,

this country will be law-abiding, so long as we have a pure and independent judiciary, and a fearless and patriotic bar. I thank you. (Applause.)

President Pogue—As I have said, I do not intend to make any formal speech of introduction of any of the speakers here tonight; and I would have the least, if any cause, to make a speech of introduction of our guest on my right, Justice of the Supreme Court of Ohio, Honorable James G. Johnson. (Applause.)

ADDRESS OF
HON. JAMES G. JOHNSON

Mr. President and Gentlemen:

A judge has an unusually keen delight in being permitted to meet the brethren of the Bar in close professional communion, such as is here tonight.

A judge of the Supreme Court does not have the opportunity to frequently mingle with lawyers. There seems to be something that fixes his habits on him and withdraws him from that freedom of action that others have.

An occasion like this compels a retrospective view of the Association, of its growth, of its influence in the community and of its personnel. A half century of existence and such a half century. In that half century science has explored and explained fields formerly unknown. Government has concerned itself with the development of our natural resources, with business and with the entire social fabric.

The laws of nations have yielded and have been molded to the new standards that have risen with the wondrous changes which have come. Statesmen, thinkers and leaders have all been influenced in their conceptions of life and of the duty of the state to the people. I am inclined to think that statesmen have much less influence over the ultimate progress of the nations than is implied by their imposing figures in history. The resistless forces of progress work their sure result, only slightly influenced by particular men.

At a celebration of a golden anniversary, each one has impressions about it that are peculiar to himself.

In one of Browning's poems an old Italian story is told by twelve different persons, each in his own way, and Browning's skill was so great and his genius so fine that the stories resemble each other only as different people look alike, or as the same thing is seen through different eyes.

Tonight I think of the lawyers of this Bar of whom I heard in the early times. All through this section there is tradition that the Bar of Hamilton County, from the very first, has included in its membership many eminent and distinguished lawyers.

I remember the names of Salmon P. Chase, George E. Pugh, Charles Fox, Bellamy Storer, Charles Hammond, Henry Stanberry, Alphonso Taft, Stanley Mathews, George Hoadly, and the long list of eminent men that adorned the Superior Court of Cincinnati, and gave to it a prominence and authority that must be a proud and pleasant heritage to their successors and to the Bar of the county.

I doubt it there has been in any part of the Union a Bar of greater men as lawyers and statesmen. These men were not mere lawyers. They had wide and varied attainments. They knew the organic structure and practical workings of a great democracy and were filled with the spirit of liberty and free institutions. They were strong, self-reliant men, free from prejudice and narrow provincial views. I am inclined to think that the lawyers of the United States have not occupied the positions as molders of public thought and instruction in the last generation that they ought to have occupied. They have not followed in the footsteps of the fathers as they ought to have done.

In the first century of our history it was from the lawyers of the country that the people received their knowledge and instruction with reference to the institutions we have built up in America, and as to what this thing is that we were trying in the Western Hemisphere, this experiment in self government. There were not many newspapers and they had not the means of communication and instruction that the later generation has had.

William Wirt, Daniel Webster, Henry Clay, Tom Corwin. Judge Douglas, Mr. Lincoln, and others like them, were the real leaders of the people.

Almost a hundred years ago a foreign visitor, a sincere student of our institutions, said in a great work, that the lawyers were the aristocrats of the United States. He did not mean that

they had set themselves up as better or in a different class from the rest of the people. What he meant and what he said was that they were the teachers of the people, the promotors of intelligence and of the principles upon which the government was founded. He pointed out that the almost invisible influence of the legal profession directed the public mind and checked the impetuosity, which might be expected to develop in popular government.

In the old days the appearance of great lawyers in the trial of jury cases served to increase the general intelligence of the people. The jury box was like a public school, which was always open, and in which the juror learned his rights and duties as a citizen, and was impressed with the vast performance of doing his best to meet the full requirements of a citizen of the great Republic.

The lawyers of that day taught the people what a democracy was and created in the public mind the conception that the constitution was a great instrument to put in force and preserve in an orderly way the truths of the great Declaration, and the early lawyers explained and expounded the Constitution to their fellow citizens upon the hustings. They had wit and humor and a sound basic knowledge of the fundamental principles of jurisprudence. They did not pursue their profession as a mere trade. A meeting of court was a great event.

Our progress has been marked by three distinct periods.

The first was the formative period when the Constitution was made and adopted and the Republic sent forth on its grand mission.

Then came the age of the pioneer, and in that period great lawyers and statesmen expounded and explained the constitution, our system of laws and the high aims of American institutions.

The wise men who wrote the constitution and the great company who followed them in explaining it, were a body of men whom it would be hard to match in the annals of any country.

And then came the great period of the development of our natural resources, of invention and of the growth of vast

industrial enterprises, and it was always found that the constitution had in it the inherent vigor to meet every demand and strain. It came to be realized that its makers contemplated the new conditions and the great development which the country was sure to have, and that within its ample folds would be found sufficient power to preserve its guaranties and protect the rights of the humblest and strongest citizen. And for more than 130 years it has grandly justified the faith of the fathers, and has shown that the splendid tribute to it by Mr. Gladstone was well deserved.

But the chaos that has resulted from the dreadful experiences through which humanity has passed during the last few years has caused many patriotic sincere men to question whether the fundamentals of our American life have been profoundly moved.

The human race seems to stand checked and appalled in the face of chaotic conditions. The nations of Europe seem to make little or no progress in the stupendous undertaking of readjustment and progress everywhere is hindered. All of these things should only increase the determination to cling to and uphold the great principles of justice and right upon which this thing that we call American and its institutions were founded.

The lawyers of the United States should realize that they have a high and sacred duty to perform about it. They should resist the tendency to disregard their duty as citizens, which in some degree seems to have come upon lawyers in these strange times of specialization. They should ask themselves whether it is true that the individual is being submerged in the tendency to act collectively. Is there a disposition of government to participate in business and control its details activities in s ch a way as to interfere with individual initiative.

When the old Kentucky hero, Judge Harlan, sat on the bench of the United States Supreme Court, he remarked that illegitimate and unconstitutional practices get their first footing by silent approaches and slight deviations from legal modes of legal procedure. We shall do well to heed the warnings of that great jurist.

Within the past generation the range of governmental activity has been greatly extended. No doubt progress has been

promoted and the best interests of the state and its people in many instances have been safeguarded. But it is of vast importance that this tendency shall not be indulged so far as to materially weaken the guaranties which were solemnly written into our constitutions, under which our country and our nation have advanced to the position of the foremost nation in all the world. These safeguards were secured after long and arduous struggle, and have been a source of encouragement and confidence to the patient, honest and energetic people of America.

They were not the result of mere whim or caprice. They had become firmly fixed in the Anglo-Saxon mind. The Petition of Right addressed to Charles I, contained the substance of the first ten Amendments to the United States Constitution, and every State Constitution contains the same assurances.

Let me give you an example of the way in which the people of the Ohio Valley regarded the constitution in the very early days. Ohio was admitted to the Union in 1803. Two years afterwards the legislature of Massachusetts passed a resolution, proposing an amendment to the Constitution of the United States, providing for apportionment of representatives among the several states. The legislature of Ohio refused to recommend the amendment to the constitution of the United States, and in its resolution said that it sympathized to the fullest extent with the purpose of the proposed amendment, but that the people of Ohio dreaded to begin to tamper with the constitution, and when the legislature exceeded its powers the court did not hesitate to uphold the constitution.

In 1805 the legislature passed an act which provided that, in cases before justices of the peace, which involved between twenty dollars and fifty dollars, no trial by jury could be had, and Section 29 of the act provided that "If a plaintiff failed to recover more than fifty dollars in the Common Pleas Court he must pay his own costs." Judge Pease, sitting in Belmont County, held the statute unconstitutional, as violative of Section 8 of Article VIII of the Ohio Constitution, which guaranteed the right of trial by jury. The Supreme Court affirmed Judge Pease. The General Assembly thereupon passed a reso-

lution declaring that the courts are not authorized to declare a law unconstitutional, and the House of Representatives impeached the judges, and their impeachment failed only because there were not two-thirds of the Senate who were willing to so vote.

They were giants in those days.

Let me recall to you the performances of one of them, Charles Hammond, a Cincinnati lawyer, who was at the very front of the lawyers and leaders of the country in the early days. The bank of the United States was established in 1815, and it established two branches in Ohio, one in Cincinnati and one in Chillicothe. There was intense feeling in Ohio against the United States Bank. In 1819 the legislature passed a law to tax each branch $50,000, and made it the duty of the State Auditor to collect it. He was given sweeping powers in making the collection, and his agent took possession of $100,000 of the money of the bank. The conduct of the State created excitement throughout the country. It was felt to be open defiance of the settled law of the United States, as expressed in the celebrated case of McCullock v. Maryland, 4 Wheaton, 316. In that case there was displayed the remarkable powers of analysis of the great Chief Justice. The court decided that the United States Bank had a right to establish branches in the different states, and that the State could not tax the branch, that the State had no power to tax any of the means employed by the Government to execute its powers. The Ohio State Auditor, Osborne, was sued in the Federal Court. He reported the proceeding to the legislature and a report was made in which the decision of McCullock v. Maryland was denounced. Charles Hammond wrote the report. The legislature passed a law making it a criminal offense to protect the property of the National Bank, and made it illegal for a notary public to take an acknowledgment of any instrument of the bank, or for a recorder to record such an instrument. The case of the Auditor was taken to the Supreme Court of the United States and is reported in 9 Wheaton. It became a famous case and the gravity of the issue was everywhere realized. Distinguished lawyers represented the parties: Henry Clay, Daniel Webster,

and William Wirt were the attorneys for the bank, and Charles Hammond and John C. Wright for the State. John Marshall again spoke for the court and upheld the power of the government to create instrumentalities, the business of which should be beyond the power of the states to tax.

Mr. Hammond was born in Baltimore, moved to Ohio and became a member of the legislature, wrote the report denouncing the decision of the Supreme Court in McCullock v. Maryland, and argued the Osborne case before the court. Although he conscientiously represented the side which was demonstrated to be the wrong side, and stood for what he conceived to be the rights of the people of the states, his argument was everywhere regarded as one of the wonderful intellectual performances that had up to that time been made by any lawyer in that great tribunal. Governor Greene, of Rhode Island, who had a similar case for his State, and who was on the same side as Mr. Hammond, afterwards wrote that when the case had been completed, he took a trip down the Potomac with Chief Justice Marshall, who was intensely interested in the history and personality of Charles Hammond. He spoke of the remarkable acuteness and accuracy of his mind and referred with emphatic admiration to his argument in the bank case. Judge Marshall said that he had met no judicial record of equal power since Lord Hardwick's time and that he was without a superior in our country. He did not care much for authority. He was one of those rugged, powerful intellects which was self-reliant.

Some years after the case was disposed of, John Quincy Adams, then President, at the suggestion of Chief Justice Marshall, arranged to appoint Charles Hammond to the Supreme Court of the United States, but Mr. Hammond declined. He was at that time reporter of the Supreme Court of Ohio and came to Cincinnati and established the Cincinnati Gazette. He became the foremost anti-slavery agitator in all the western country. He profoundly educated the people in the nature of their institutions, in the fundamental principles of a democracy, and maintained a very high standard to the close of his life in 1840 in the City of Cincinnati.

It is a singular fact that two of the reporters of the Supreme

Court of Ohio were appointed to the Supreme Court of the United States, but that neither of them took the oath of office.

When I think of Charles Hammond and Edwin M. Stanton and Salmon P. Chase, Thomas Ewing, Thomas Corwin, Allen G. Thurman, Rufus P. Ranney, and the great crowd of eminent men who have practiced at the Cincinnati Bar in the early days, men who were accustomed to the hardships of those pioneer days, who were educated after the manner of those early times, came to the Bar and performed the duties of lawyers in the splendid way in which they did, contributed so much to the upbuilding of the country, I cannot but think that there are in these later days younger men like unto them who, when they become impressed with the need of vigilance and careand activity on the part of the lawyers of the country, will not be found wanting; that they will not permit the life and vigor of the fair fabric of our constitution to be sapped, but will bring the people back to an appreciation of the necessity of upholding it.

I would have the lawyers of the country teach the people of the country to revere the fathers of the Republic, and all those who have labored and struggled for it in the years that have followed. But greater than any of these fathers of the Republic, greater than Washington, greater than the Adamses, or Jefferson or Alexander Hamilton, greater than Jackson or Lincoln, or Roosevelt, or Wilson, is the constitution of the United States and the American Republic.

President Pogue—I am sure that it has been a pleasure to every member to have listened to what has been said by Judge Johnson. I now direct your attention to one of the eminent members of the profession from the northern portion of the State. It is my pleasure to introduce, and your pleasure to hear, Hon. Paul Howland, of Cleveland. (Applause.)

ADDRESS OF
HON. PAUL HOWLAND

Mr. President, Guests of the evening, Ladies and Gentlemen of the Cincinnati Bar:

It is my privilege, sir, to bring greetings from the Forest City on the Lake to this Bar Association of the Queen City on the river. If sickness had not intervened Judge Sullivan, the distinguished president of our Association would have been here in person, Mr. President, to present the most cordial greetings from the Cleveland Bar Association to the Cincinnati Bar Association.

It is a great honor to be invited to be present at the fiftieth anniversary of the Cincinnati Bar Association, and feeling that possibly business engagements might prevent me from attending your next fiftieth anniversary, I thought it best to accept this invitation, notwithstanding the fact that there were certain very embarrassing limitations contained in it.

In order to play fair with you Mr. President, and not overstep the bounds of the invitation as to time consumed, I have carefully gone over this manuscript, and it will take in the reading but ten to twelve minutes of your time. I will, therefore, ask you to follow me—there are only eight or nine pages—very carefully if you will, for if Mr. H. G. Wells had undertaken to say what I have said in these eight or nine pages, it would have taken a whole volume, gentlemen, I assure you. (Laughter.)

The line of thought to which I wish to direct your attention has already been suggested by the remarks of the distinguished President of the State Bar Association, and by the learned member of the Supreme Court, who has just thrilled us by his eloquent address. I am, therefore, afraid that I will be simply gathering up the gems that they have so abundantly scattered for our enjoyment, yet I make no apologies, for I will present

for your consideration our old friend, the American lawyer, and discuss his status in the Republic.

The just and proper administration of the law has at all times and in all countries made for stability and permanence in government, and the lack of it has always resulted in criticism, unrest and revolution. From the earliest time struggling humanity, in its crude and halting efforts to administer justice, has always recognized certain conditions as absolutely essential. These conditions are identical with the ones that confront us today, and the quick recognition of their importance by the ancient administrators of the law, whether king, judge or prophet, seems to lessen the number of the intervening centuries, and place us face to face with our brethren of the olden times.

Probably the earliest authentic statement of the difficulties in the administration of justice is found in Exodus, where it is related that Jethro, on the occasion of his visit to Moses, his son-in-law, gave Moses some advice upon that subject, in substance, as follows:

> "It came to pass on the morrow that Moses sat to judge the people, and the people stood by Moses from the morning unto the evening, and Jethro said, 'The thing thou doest is not good. Thou wilt surely wear away, both thou and this people. Provide out of all the people able men such as fear God, men of truth, hating covetousness, and let them judge the people at all seasons, reserving only the greater matters for you. If thou wilt do this thing, thou shalt be able to endure, and all this people shall also go to their place in peace.' "

It will be noted that in this statement there are found the essential conditions which at all times and under all circumstances are necessary to the successful administration of justice:

1—The court must be open and available to all the people at all times;

2—The judges must be able men, such as fear God, men of truth, hating covetousness;

3—There must be no unnecessary delay in judgment.

The advice of Jethro was followed by Moses, and the system then established endured for four hundred years, and up to the time of the Prophet Samuel. "But when Samuel was old he

made his sons judges over Israel, and his sons walked not in his ways, but turned aside after lucre, and took bribes and perverted judgment." Whereupon all the elders of Israel cried until Samuel, "Make us a king, to judge us like all the nations."

The demand of the people was finally granted, the government overthrown, because the judges of Israel turned aside after lucre, took bribes and perverted judgment.

Another instructive incident is the unsuccessful, though shrewd and crafty plan of Absalom, to wrest the government of Israel from David, his father:

"And Absalom rose up early and stood beside the way of the gate, and when any man that had a controversy came to the king for judgment, he said unto him, 'See, thy matters are good and right, but there is no man deputed of the King to hear thee. Oh! that I were made judge in the land, that every man which hath suit or cause might come unto me and I would do him justice,' and in this manner did Absalom to all Israel that come to the King for judgment."

In the soliloquy of the Melancholy Dane the law's delay occupies a prominent position in the list of woes which drive humanity to desperation.

In English history the horrible record of Jeffreys, the bloody assizes, the shameless and audacious bribery and corruption rampant at that time, were the potent factors that drove James II to France and ushered in the reign of William and Mary.

From the earliest authentic history the mal-administration of justice has, more than any other internal cause, undermined and destroyed existing governments. Charges of mal-administration, whether true or false, have been and are the most attractive points of attack for the demagogue seeking to rise to power on the ruins of a government destroyed.

If the administration of justice, good or bad, exercised such a potent influence upon the stability of kingdoms and the permanence of empires, guarded and protected by all the powers that do hedge about a throne, how much more potent must be its influence on the permanence and stability of self-governing states, where the government is directly dependent upon the

popular will. At the time of the adoption of our Constitution, it was claimed that we had become subjects and slaves to the tyrant majority, a tyrant far worse than King George, for the majority, while absolute, can never be punished; that the popular will was flighty and uncertain, with no continuity of purpose, driven hither and yon by every wind of passion, repealing today the decrees and laws of yesterday, and looking forward to the morrow with the hope of trying some new nostrum on the body politic, and rushing madly out of the realm of reality in pursuit of some phantom Utopia. All the elements that had hitherto made for stability of government had been swept away by the Declaration of Independence and our Constitution. The conservative aristocracy was gone, hereditary titles had vanished, kingly prerogatives were no more, the citizens stood forth clothed with all the rights of a king and by majorities speaking the old familiar language of sovereignty. Thus it was claimed the stage was set for the demagogue to strut across and sway the fickle populace to do his selfish will; that no government could long survive where the self-interest of the citizen continually clashed with the general welfare. In short, a gloomy picture of vacillation, hesitation, weakness and chaos, was drawn for us by our enemies, and our friends were fearful that the pictured dangers might become realities.

It seems, however, that at the same time the drift towards popular government was gathering headway there was also an idea, a principle, a conviction, taking form in the minds of men, that government to insure liberty must be a government of law and not of men. In the great struggle against the dispensing power of the King in the 17th century, the King told his Chief Justice that he must have twelve judges of his mind to declare the dispensing power legal, and thereupon the Chief Justice replied, "Your Majesty may find twelve judges of your mind, but hardly twelve lawyers."

The lawyer has done his part in breaking down the barriers of absolutism in government and ushering in the day of a broader liberty. At the same time he has been careful to set the limits and fix the boundaries of that liberty in order to prevent it from drifting into license. In this country you can

call this lawyer by any name you please, James Otis, Patrick Henry, Hamilton, Jefferson, John Marshall or John Doe. He is a type, and the constitution of the Republic is his handiwork. Being his handiwork, he will uphold and maintain it. He has gone as far towards democracy as he believes it is safe to go. The training of his profession has taught him of the trials and difficulties through which the race has struggled in its fight for liberty, and the influences and forces which have kept it shackled in the past. The growth of the law, as shown by the precedents with which his study has made him familiar, has taught him that a legal principle may have required centuries of contest and struggle to establish as the law of the land. His education and training, the history of jurisprudence, the practice of his profession, all combined to teach him the danger of hasty and emotional judgments, and the necessity of absolutely eliminating prejudice, passion, and selfishness. It thus happens that today the bar of America is inclined to be conservative in matters relating to the administration of justice, and stands almost to a man against the doctrines of Bolshevism and Socialism as subsersive and hostile to any rational conception of liberty. This is a government of law and not of men.

The lawyer was a leader in the struggle for liberty under the law and against absolutism. Today he is standing like adamant against all the isms that he believes would destroy liberty. The American lawyer is the great intermediate power between the conservative on the one hand and the radical on the other, and binds them together in a stable government of law.

> DeTocqueville says: "The authority the American people have entrusted to members of the legal profession, and the influence which these individuals exercise in government, is the most powerful existing security against the excesses of democracy.
>
> "Without this admixture of lawyer-like sobriety with the democratic principle, I question whether democratic institutions could long be maintained, and I cannot believe that a republic could subsist at the present time if the influence of lawyers in public business did not increase in proportion to the power of the people."

With my own judgment reenforced by this recognized authority, I will steal a few lines from Horace, and pay my tribute to

"The man of firm and righteous will—
No rabble clamorous for the wrong,
No tyrant's brow whose frown may kill,
Can shake the strength that makes him strong:"
The American lawyer, a pillar of state.

The American Lawyer, a pillar of state. (Applause.)

President Pogue—When the Bar Association was founded fifty years ago, there was elected as its first president Alphonso Taft. Hanging on the wall, between the folds of the flag of the United States of America, is a picture of Judge Alphonso Taft. Seated fourth from me on the left is a son of that distinquished president, our fellow citizen, Honorable Charles P. Taft, who has done so much for our community. (Applause.)

I may say that I have never attended a dinner, or a banquet as you may call it, where I had any more pleasure than at that which was given in this banquet room a few months ago to the Honorable Charles P. Taft, not only for what he had done and we were celebrating on that occasion, but for what he has done on many occasions, and I am sure his spirit will always continue to make him do in the future what he has done in the past.

You will find in the original roster of the Bar Association his name, appearing under that of his distinguished father and of his brother, Peter Taft, the three appearing right in a row, one after the other; and we have with us now, as one of our officers, the grandson of that distinguished president, Mr. Robert A. Taft.

We are approaching that part of the evening where your attention will be directed to what each of the remaining four speakers may say in turn as to what he feels and what his thoughts are. It may be that some of them will let you into some of the little secrets of what happened in those days of long ago. I cannot promise that because I know nothing of what they are going to say. In this connection it is a great pleasure, I know, to this Association to hear from Governor Harmon, as it was when, just a year ago, we wished him a happy voyage across the ocean. We will now hear from the Honorable Judson Harmon. (Applause.)

ADDRESS OF
HON. JUDSON HARMON

Mr. President, and Brethren of the Bar, and our Honored Guests, whom we are all glad to welcome and ask to come again:

One feels very small and insignificant among the giants of those days. I took part as a very young man in the organization of this Association, and if any one at that time had told me that I would live to take part in the celebration of its fiftieth anniversary I should have been skeptical; and if I had been told that such a large percentage of those who were my associates on that occasion would also survive to join me, either by their presence or in their hearts in this celebration, I should have been glad.

I always believed in the necessity of organization among lawyers, that it was more necessary for them than for any other profession, for we are the only profession whose business it is to fight each other, and, therefore, we ought to get together some time when no clients are present , and find out what good fellows we all really are. (Laughter.)

And then not only is it better for a lawyer, from a selfish point of view, to be a member of an organization, instead of being scattered through other organizations, or being an unorganized body. Lawyers should be organized, so that there may be a unity of action, a comparison of views, that they may discharge the high duty which the profession, above all others, owes to their country, their state and their city.

But I am not going to talk on general subjects of that sort, which have already been spoken of and will probably be again, which you all know about anyhow, but I take it that I was selected as one to address you tonight because I am supposed to be nearing the age of reminiscence (laughter) and, therefore, I am going to talk to you for a few minutes and call your attention a few things in connection with the early days of this asso-

ciation. I am not going to be solemn about it, thinking of the many who are gone, but I am going to look back over the many things which I recall and I prefer to speak about those things which are characteristic of lawyers when they get together socially and find out what good fellows they are.

I borrowed the old roster and the old minutes, covering the first ten years, and read them over. Some things refreshed my memory, and others I remembered without refreshing. All the leading lawyers of that day belonged to the association and took an active part in it. As has been said, Judge Alphonso Taft was the first president, Henry Stanbery was the second, and Judge Collins and Judge Hoadly, and men of that class, occupied not only the position of president, but all of the others.

I remember that during the first year or so the sessions of the association would remind one of a constitutional convention, because those great men, those learned men, night after night were discussing changes in the Constitution of Ohio. The constitutional convention was about to meet, and some of these gentlemen were members of it; but when, after all their learning and their ability at framing fundamental law, the people had no use for that constitution, then the Cincinnati Bar Association came down to earth again and took up more practical things.

I remember one of them was that we were the first to move to abolish the ridiculous second trial, that in those days one could have by giving bond for costs.

I remembered, without reading it, what the president has referred to about the contest between Mr. Stanbery and Rufus King on the one side and Judge Hoadly on the other; I was present on that occasion. I remember that Mr. William Ramsey moved to instruct the committee to furnish no wines or other liquors at the banquet. Governor Hoadly, then Judge Hoadly, seconded the motion, and I have always remembered the earnest speech which he made in support of it. One of the expressions he used was "we have enough wrecks along the shore, let's have no more." But Mr. Rufus King moved to table the motion and it went on the table and stayed there until the Eighteenth Amendment. (Laughter.)

Now George Hoadly tells this little incident: Immediately after that famous debate his father sent word by his German coachman—they all drove to town in buggies in those days. there weren't any street cars—to his wife, that he would not be home until late, and when he got home, rather late, he found his wife in quite a state of grave concern, because the way the message came to her by that German coachman was "the Judge he says he won't be home until late tonight, he is going to a saloon" (laughter), whereas the message that he had sent was that he was going to the Bar Association. (Laughter.) Now, it is generally believed that that German coachman got mixed up about the bar and the saloon (laughter), but it is my impression that the Governor drew such a dark picture of what would go on at Bar Associations if they had wine and other liquor, in his advocacy of the motion that that be cut out, that this German coachman and everybody else, including Mrs. Hoadly, thought it was a terrible thing to go to a Bar Association when that motion had been tabled. Well, the committee obeyed the tabling orders, and it is amusing to read through the minutes, and see the frankness of certain of the secretaries in setting forth the items of expense, and the treasurer's report in which the name of Brachmann and Massard continuously appears (laughter). They didn't deal in dry goods, either. One secretary—I have forgotten who—but he had a sense of humor, for he has noted that after the business there was social intercourse and "appropriate refreshments" were served (laughter).

Now, another thing that I had really forgotten was that some of the younger members conceived the original idea of getting up what they called a sub-organization in the Bar Association, I think they called it the junior something, but it was a sub-organization. Whether it was because they thought they were better than the rest of us, or because they were younger and needed to get together oftener than the main body, I do not know, but it set out in the minutes that it was for social intercourse, and they were to have literary addresses and discussions on the law and so on, a very high-sounding purpose. I don't know whether they saw enough of each other, or discovered that they couldn't learn anything from each other, or what

it was (laughter), but in a very short time the report in the minutes is that the attendance had gotten so small that it wasn't worth while to light up for them. Considering the shortness of the existence of that sub-organization, it is an extraordinary thing that all the members of the committee that got it up and ran it are alive to this day, except one. That committee was composed of Charles B. Wilby (laughter), David W. Hyman, W. C. Cochran and Charles P. Taft (laughter), and the suspicion is raised that this remarkable longevity, which no other committee or no other body of officers of that Association showed, was due to early retirement from that sub-organization (laughter).

Now another thing—that was in 1876. In that same year, soon afterwards, the Grievance Committee reported that an advertisement had appeared in the Cincinnati Commercial, reading as follows: "Divorces legally and quietly obtained (laughter), for incompatibility, and so forth; change of residence unnecessary; fee when secured; address Lawyer, Box 565, Cincinnati, Ohio."

The committee informed the Association that they had investigated and discovered the name of this man, and that they had examined the authorities and found a case in Illinois where some one had published an advertisement like that and had been expelled from the Bar. They recommended prosecution, and the committee was thereupon directed to proceed to prosecute this man. Now, there is only one member of that committee who is still with us, and he seems to have been particularly zealous in pushing this matter, not only in making the report, but also in obeying the instructions to proceed to prosecute. That member was one Edward Colston (laughter). Until I read that I couldn't understand why it is that he has shown a disposition of late years to specialize in a branch of the practice of the law (laughter). I am sure he didn't depreciate the sensitiveness with which this man concealed his identity behind a box number, instead of proclaiming it to the world on a shingle, and I am sure he resented the inference that judges could be found who would grant divorces for causes not mentioned in the statute, and without the requirements of the law as to residence, but he certainly did not approve of C. O. D.

decrees. But I am certain, gentlemen, and I think you will agree with me, that what aroused him above all things was the suggestion that this man was going to do this "*quietly.*" (Prolonged laughter.)

It is too late for me to indulge in any further reminiscences, but as I and eighteen of my associates in those days of the beginning have survived to take part in this celebration, so, no doubt, an equal number or perhaps more of those among you whom I see here tonight, will live to celebrate the one hundredth anniversary of this Association, and I can only wish that those of you who do, when you look back over the years that shall have passed, and think of what was said and done in those years, will find as many pleasant memories which will warm your hearts with friendly recollection, as I have found in going over these old minutes and in looking back over the past fifty years. (Prolonged applause.)

President Pogue—After what Governor Harmon has said, no introduction seems to be necessary for the next speaker. I am not going to say a word of introduction, because Mr. Colston has been too well introduced by Governor Harmon. (Laughter and applause.)

ADDRESS OF
HON. EDWARD COLSTON

Mr. President and Gentlemen:

Did you say "louder?" (Laughter.) You flatter me. I was very much entertained by reading in the newspapers the accounts given of the performances of an alleged ghost up in a place in Nova Scotia, I believe, and I was still more entertained by reading the report made by a distinguished scientist in the interest of psychical research—I couldn't have said that if this hadn't been a dry banquet (laughter). He went up there and made two great discoveries; the first discovery was that Mary Ellen was the name of the ghost; and the second discovery was of a thing he called *discarnate* intelligence. Now this discarnate intelligence is, as I understand this scientist, a marvelous power, having potency to overcome all difficulties; something that might get you over all the rough places that you encounter even in the practice of the law, or otherwise.

I couldn't help hoping, as I came down here tonight, to make a speech—prepared, of course—that one of those intelligences would furnish me with utterance to respond properly even to the slanders my partner has just perpetrated upon me. (Laughter.) He even goes so far as to intimate that I use a loud voice. (Laughter.) And he put one of his friends up to play a joke on me along those lines. Justice Clark, who is now sitting as a member of the Supreme Court of the United States, came down here to sit on the Court of Appeals, and I happened to have a case in the Court of Appeals. Now, Clark is a great friend of Harmon's, and after Court adjourned that evening he went out to take dinner with Harmon. Well, Harmon hadn't thought fit to come to Court to hear me in my case, it was just a little case—he always thinks that about the cases I am in (laughter) —and that it wasn't worth his attendance. At dinner Clark said to him, "We had the pleasure"—well, I don't know whether

Clark said "pleasure"—"of having your partner before us today." "Well," Harmon said," "you did?" and Clark said "Yes," and Harmon said, "Oh, yes, I believe he did have some kind of a case up there before you, I don't know what it was. How did he get along?" "Well," Clark said, "we heard every word he said." (Laughter and applause.) I don't believe Clark ever said any such thing. (Laughter.) Harmon made the whole thing up just to get off something on me.

But, to get back to this question of discarnate intelligence. I thought what a fine, good thing that would be to have around a law office; just imagine having a thing of that sort with every power, power raised to the nth degree, to overcome all difficulties; to have a thing like that in your office, in the drawer of your desk; to have a thing like that to go to Court with, good every now and then; why, if I had that, what would become of the rest of you fellows? (Laughter.) Why, I would even have a chance to overcome my friend here on the left; I do occasionally, but I could do it more than that. (Laughter.) And then, with this discarnate intelligence, I might have had some good chance of standing up against my good friend Murray Seasongood, in that marvelous case that he has before the patient, long-suffering Judge Darby. In that case, which he appropriately calls an omnibus case, a case in which he combined common law and uncommon law (laughter); mercantile law, stockbrokers' law, law of the curbs on Broad Street, New York; all was brought in and hurled against that innocent, long-suffering judge. And I believe the president of this Bar Association was one of Murray Seasongood's victims in that case. (Laughter.)

We heard so much in that case of "In-re Wilson" that it reminds me of what my good mother used to say to me when she was trying to instill into me some knowledge of English history —when she would tell me that Bloody Mary said when she died they would find "Calais" engraved upon her heart. I think those of us who have suffered at the hands of Murray Seasongood in that case would find *"In-re Wilson"* engraved on ours. (Laughter.)

But, notwithstanding that we run up against stiff propositions, such as I have mentioned, in our modern practice, yet the practice of the law now is nothing like as laborious as it used to be before the days of shorthand reporters. Then the lawyers, no matter how long the trial of the case was, had to examine the witnesses, and had to take notes of the testimony, unless they had some innocent young man in their office who was afraid to rebel and they required him to come to court and take notes.

And when you came to make up a bill of exceptions in those days, I tell you it was often a tumultuous business. My great master in the law, Judge Hoadly, used to tell a very amusing story about Judge Bellamy Storer and a certain lawyer. It was at the end of a very hot term of the Superior Court, during which a very difficult, hard-fought jury case had been tried, in which one of our most contentious, able and aggressive lawyers had appeared—I am looking in an opposite direction from Charley Stephens when I am saying that—a man with a most vigorous intellect, of robust constitution, a man who claimed everything and conceded nothing; and he was required to get up the bill of exceptions. Judge Storer said to my friend Judge Hoadly, "I have spent five afternoons presiding over the wranglings of the lawyers who were trying to settle that bill of exceptions, and I am just completely worn out with it; and I wanted to get away on my vacation, I had bought my tickets and reservations in the sleeping car, and on the afternoon of the day before I was to go away, here came in this lawyer and laid down the bill of exceptions and said, 'Judge, we have got it settled now; it is all right, please sign it.' I said 'Just leave it here, when I go into my consultation room I will look at it,' so it was left there." Judge Storer said he looked at it and the bill was just about as hopeless as it was in the beginning; but in telling this to Judge Hoadly, with a twinkle in his eye he added, "I fixed him, I fixed him, I wasn't going to let my vacation be broken up, and I signed that bill of exceptions, but in that part of it in which it said 'this is all of the testimony offered on the trial of this case,' I just interlined the word 'not'." (Laughter.) And he said, "I called up my messenger and I told him to take the bill of exceptions down to so and so tomorrow at 10 o'clock

and deliver it to him, and" he said, "I left at 9 o'clock on the morning of that day."

Now, I am going to tell you about some of the labors we used to have. There was the admiralty practice; I don't know whether any of you know what an admiralty case is, for I haven't seen one for thirty years. But in admiralty practice all the proof had to be taken in depositions, the judge never saw a witness, and when I became the junior member of a certain firm in this town that had a very extensive practice, there was another firm, the firm of Timothy D. Lincoln, in which my distinguished friend, Charley Stephens, was a junior, that had the bulk of that practice; and those two firms were on the opposite sides of almost every admiralty case that was heard; and it fell to my lot to take the depositions on our side and to cross-examine the witnesses, whose depositions Mr. Stephens would take. Those depositions were written by very worthy young men, young men that were students in the office, and who were more or less partial in their feelings. And when I would have occasion to cross-examine a witness in Charley Stephens' office, and that witness would begin to let out something that was favorable to me, the shortness of memory displayed by those notaries was most remarkable. (Laughter.) I would say "write it down, write it down the way he said it." would say "write it down so and so," and Stephens would say, "He didn't say that." Of course, by that time the witness had been thoroughly warned, so we had to let it go. But I will say, for the credit of my friend Charley Stephens, that the worst I ever heard him get off on any occasion of that kind was "By golly, he didn't say it." (Laughter.) Just that way. All that know me can appreciate that no soft pedal talk like that was sufficient to meet the exigencies of my feelings (laughter), and what I would say, well, you can imagine.

Those admiralty cases were nearly all, so far as I was concerned, collision cases. And in the admiralty collision cases there were only three points conceded; everything else was contested from start to finish. Now, the three conceded points were first, that there was a river (laughter), then there had to be two boats or two water-craft or else you couldn't have a colli-

sion, and then there was the collision itself. Of course, Charley's crew was there and my crew was there; but the further stunt in every case, was to try, to find some fellow that was on shore and witnessed the whole performance (laughter)—a witness who had some credibility; we had to try to get some fellow who had been out squirrel hunting, who was standing behind a tree so that he could see everything, but was where he himself could not be seen by the crews on the boats (laughter); and there was no chance to contradict.

T. D. Lincoln was one of the eminent members of the bar. Judge Hoadly used to tell a story on him; he sometimes had admiralty cases that were not collision cases, sometimes his boat would be charged with a common carrier's liability, and if my friend, Mr. Lincoln, couldn't think up any other defense he always got up a defense of act of God, and as Judge Hoadly used to say, every such act of God consisted of sudden gusts of wind manufactured in T. D. Lincoln's back office. (Laughter.) He had a common law case of a passenger on an up-river steam boat, injured when the boiler let go. The man was scalded in a most terrible manner. I think it was Governor J. D. Cox and Mr. Follett who brought the suit, and Mr. Lincoln, of course, was defending it. Gus Fisher was a noted steam-boat inspector in those days—possibly some of you here may remember him—and was on the witness stand for the plaintiff, and when Mr. Lincoln came to cross-examine him he roared out at him, "Mr. Fisher, when the boiler of a steam boat explodes, where is the safest place?" and Fisher, as quick as a flash said, "Five miles in the country." What Mr. Lincoln intended to ask him was, "When a steamboat boiler explodes, where is the safest place on the boat," because they had charged contributory negligence; claiming that the passenger had been guilty of contributory negligence, because he stood too near the boiler.

There was a kind of tradition in those days that nobody could beat the Lincoln firm in an admiralty case, and I don't believe in all my strenuous exertions I ever overcame that tradition but once; and that was a case of a collision at a bend down here in the Ohio River. And I often look back at that case, because there was something romantic about it, especially about the

nomenclature that hung about that case. The collision occurred between Aurora and Rising Sun (laughter), and my steamboat was called the Golden Rule. That was a kind of a case which you may imagine a fellow would go into with considerable *glow*. One of Charley Stephens' barges, belonging to a tow going down the river, had, for some reason, I never yet have understood, been cut loose from the rest of the bunch and went sailing gaily down the current, right in the channel and hit plumb on the head of my up-stream boat; and the barge got split in two and its cargo of coal was spilled in the water. He took the position that my boat had no business to be in the river at all when his barges wanted to come down. Well, the case came on for trial; and was tried here before Judge Hammond from Memphis, Tennessee, sitting by designation; and when Judge Hammond handed down, or announced his decision in my favor, Charley Stephens leaned over the table towards me and said, "Of course, I might have expected that; that is just what I expected; that Judge was in the rebel army and he knows you were there too." (Laughter.) "What chance has a loyal man got under those circumstances, by golly." It is extraordinary, the excuses that lawyers will sometimes give for getting beat in a lawsuit!

Now, I am going, at the expense of being a little personal (laughter)—I have been extremely personal I fear—I am going to tell a little something in regard to my early struggles at this bar, and those early struggles were not conducted under the most flattering circumstances looking towards success. I had a little office up here at the north-east corner of Fourth and Walnut, over John D. Park's drugstore; the furnishings of that office consisted in part of one desk—a small, narrow desk just wide enough to accommodate one person—and two chairs, in one of which I sat, the other was most hopefully located for the client, who rarely came in. There was matting on the floor and an old-fashioned egg-shaped coal stove in the center of the room. If I recollect aright my library consisted of Swan's Treatise and a book on habeas corpus. (Laughter.) It was perfectly natural that I should have the Swan's Treatise, but where the devil that book on habeas corpus came from I couldn't

say; and although I read it in my moments of leisure—and I had many of them—I give you my word that in the fifty years of my practice I have never had a case of habeas corpus. (Laughter.)

I was imprudent enough on one occasion to take an account of cash on hand, and while I sat looking hopefully at that vacant chair, I counted my cash and I found to my dismay that I had exactly three cents; I stuck that three cents carefully in my pocket, so I could pay toll over the Ohio bridge, because I was then boarding in Covington, and I sat there looking still more hopefully into that vacant chair, wishing that a notary fee might come along to enable me to get lunch at old John Cavagna's, Fifth Street, where the lunch consisted of a cup of coffee and a roll and a slice of ham, which we would eat off the top of a barrel in the back of his grocery, where he kept his lunch counter.

Mr. Charles H. Stephens—And very good, too.

Hon. Edward Colston—Yes, and very good; it had to be. (Laughter.)

Now, I want to say that in those early days there were two men in this community that helped me as much as two men ever helped a struggling young fellow, and I am going to express the warm impulse of my heart by making cordial acknowledgment that both of those men were Jews. Maurice William Meyers was one of those early friends; how that friendship originated I really don't remember exactly, except I think it arose on an occasion when I went into the library before I had money enough to pay for the admission, and he came to kick me out, and I talked to him, and pleaded with him in that soft, modest voice which I have never found since!

Mr. Meyers was a very unusual man; many of these younger members of the bar don't know anything about him, don't know anything about any such man. He was not a man bred to the law. I doubt it he was a man of academic education; I think I have heard he was not; on the contrary, I think he went really from a clothing store to the law library; but he was a man of a great deal of ability, and possessed a powerful intellect, and had a great sense of humor, and a biting sarcasm that was very

dangerous to run up against. For I remember on one occasion there was a great murder trial going on in what we in those days called room No. 5—God bless old room No. 5—there were many criminal cases tried in that room, and I believe, sir, that some divorce cases were actually tried in that room (laughter)—and George E. Pugh, one of the greatest advocates, one of the greatest lawyers that ever was connected with this bar, was defending the fellow that was on trial for murder. Pugh was trying to secure an acquittal on matters of law, and was having an awful hard time of it. He kept sending up to the law library for books; and at the climax of his argument he reached out for the Fifth Volume of Taunton, but found, to his horror, that it was the Second Volume. He snapped his fingers for the messenger boy and said, "Go up to Mr. Meyers and return this book and tell him I wanted the Fifth Volume; and tell him that the next time I send for a book he should pay more attention to his business and look more closely into the list that I send." The boy had to skip up five flights of iron steps—because there were no elevators in those days—and he got to the law library in a state of exhaustion. He delivered Mr. Pugh's message to Mr. Meyers, and Mr. Meyers got up from his seat and went to the shelf and pulled down the proper book and gave it to the boy and said, "Take this book to Mr. Pugh, and tell him to keep on sending up for books and I will keep on sending them down to him, and tell Mr. Pugh that Mr. Meyers says for him to keep on talking, for as long as he is talking his client is living." (Laughter.) Mr. Meyers used to keep his street costume in his locker during the times when the law library was open, because he had to do work there. The county commissioners were pretty mean in those days, they made my friend Meyers do most of the janitor work. But when he put on that suit of clothes at the time that the library was closed for the day he was a grand figure—and I am saying this with the love that I have for him—for I want you people to know him. That costume consisted of a white, well-brushed beaver hat, a cloth suit beautifully brushed, low cut vest displaying an expanse of the whitest linen you could possibly imagine and of the finest character, shirt front held together by three beautiful twinkling

diamonds, a flower in his lapel, patent leather pumps showing just the requisite amount of white stocking, white gloves on his hands. And when he turned into Main Street from the Courthouse people who didn't know him said, "Who is that?" and people who did know him said, "That is the Law Librarian!" (Laughter.) I loved Bill Meyers; I hope that he is having as good a time tonight as we are having here.

Now, Mr. President, I understand you to say that this is the fiftieth anniversary of the Cincinnati Bar Association?

President Pogue—So said the announcement.

Hon. Edward Colston—Well, that carries us back to the year 1872 if my arithmetic is right. I want to tell you of some of the things for which the year 1872 was illustrious: One was the fact that it was the birth year of this Association, and the other is that it was the year in which my great, distinguished partner became a democrat. (Laughter.) And all who know him and have seen his career since can bear witness that from that time to the present he has never allowed a blade of grass to grow under his feet in the political field. He began by being judge of the Common Pleas Court on one side of the Court House, and judge over and over again on the other side of the Court House, which was the Superior Court, and then after being a partner of mine for awhile he went on to Columbus as the democratic Governor, and you know that meant something, because the State of Ohio wasn't much given in those days to having democratic Governors. And the rule was that when the State of Ohio had submitted to one democratic Governor's term, it had to take a long period of repose and recuperation before it repeated the dose. (Laughter.) But this man Harmon broke that rule by succeeding himself, and in breaking that rule he rolled up the most phenomenal majority that has ever been known in the State of Ohio, namely a hundred and one or two thousand majority, and in rolling up that majority of over a hundred thousand he beat the man that is now in the White House at Washington, and let me tell you that that man is making one of the best Presidents the United States has ever had. (Prolonged applause.) Now, that was going some.

Now, whether that was because of his associations with me I don't know.

A voice in the audience—Louder.

Hon. Edward Colston—What did you say, louder? I will say, my friends—I don't know whether I am logical in making this assertion or not—that a climax is only illuminated by having an anti-climax; so when we are speaking about the famous things that happened in 1872, I should not omit that in that year a unique member of this Bar—little Sam Crawford—was elected Mayor of Glendale. Now you, sir, Mr. President, live in what was formerly the village of Clifton; and I will say that when Clifton was a village it considered itself some pumpkins as an incorporated village; but I want to tell you that the Village of Glendale was always the highbrow suburb of Cincinnati. In Glendale lived such men as Stanley Matthews, one of the greatest lawyers, I was going to say, of this Bar, but he was one of the greatest lawyers of the country, and he was afterwards Justice of the Supreme Court, and the great law-book seller, Robert Clarke; the railroad magnate R. M. Shoemaker, not to mention, I cannot fail to mention, that most delightful man and accomplished lawyer, Samuel J. Thompson, a one-time partner of my friend on the left. And it was conceived that it would be a singularly fitting thing if such a distinguished municipality as Glendale should have for its mayor such a distinguished man as Stanley Matthews, and accordingly he agreed to run for Mayor. Now, some mischievous fellow walked up to little Sam Crawford and said to Sam, "Now, Sam, if you could only beat Judge Matthews for Mayor of Glendale, it would be the greatest feather you ever had in your cap." Well, Sam said he believed he would try it on, and he was put on some sort of ticket—I don't know what kind it was—but, anyway,when the votes were counted Sam was elected Mayor of Glendale and Judge Matthews was not.

Well, Sam's supporters celebrated the occasion by getting up a great torch-light procession, and in order to give Sam time to make up his speech, they wound around and in and about those serpentine avenues for which Glendale is famous; and finally they reached Sam's house. Of course, he was on the stoop, and

made his speech, and after it was over and the band had ceased to play and the torches were extinguished and the crowd had dissolved and gone away, Sam turned into the house and there he met his demure, good wife. She said to him, "Why, Sam, if you are so great as to have all of this fuss made over you, what am I?" He looked at her for a moment and said, "You are the same old fool you always was." (Laughter.)

And now, my friends, the only claim to distinction I have is in the kind of partners I have had. I have had partners who were judges and governors; two of them governors, and one of them governor twice, attorney-general of the United States, and all the while, what am I? I am in the category of Crawford's wife!

Mr. President, there are men here young enough to take part in the centennial celebration of this Association, I feel sure that those of us who are not young enough for that, who cannot be there in the flesh, we assure you we will be there in spirit. (Prolonged appaluse.)

President Pogue—Last evening I had the pleasure to be in the City of Cleveland, Ohio, at a dinner given there, and among the guests at the table was one of the judges of the Court of Appeals of this county, and some one, in responding to a toast, made the remark that this judge had been elected judge of the Court of Appeals by carrying every county in the circuit and every precinct in Hamilton County. One of his associates said to me across the table, "Do you know why that was?" I said, "No." He replied, "Why, they thought they were voting for his father." (Laughter.) I take pleasure in now introducing Judge Morris L. Buchwalter, the distinguished father of this distinguished judge. (Applause.)

ADDRESS OF
HON. MORRIS L. BUCHWALTER

Mr. Chairman, and Brethren of the Bar:

This is a very favorable side of the table to sit upon; you have just seen how our friend Colston has retried all of his cases with Charley Stephens (laughter), and under such circumstances that Stephens cannot reply; I expect, however, that Mr. Stephens will sometime have an opportunity to get even.

I don't know how it is with the rest of you, but those of us who came from the farms of the country will remember the first time in coming to a city, that wonderful impression we received of the magnitude of the buildings, the streets and all the surroundings. And this experience may be my excuse in measuring the strength of the leaders of this Bar in 1872, for I may magnify in my memory their value and standing at the bar; when we think of George E. Pugh, of Stanley Matthews, Hoadly, Stallo, Kittridge, King, and others—all men of great character as well as great ability at the Bar, I cannot do so, without asking myself, "Have we measured up to their great leadership, in the latter years of our lives, and of this Bar?"

I remember when I was a law student of passing into the Superior Court room and hearing George E. Pugh, Senator Pendleton, General Cox and others in some marine insurance case, involving ships on the Ohio River, and of how impressed I was with the grace and the learning of the addresses of General Cox and of Senator Pendleton, but more impressed with the power and strength of the argument made by Mr. Pugh.

I remember being in the court room in general term when Stanley Matthews was discussing the Bible in the Public Schools to Judges Storer, Alphonso Taft and M. B. Hagens, and that Stanley Matthews had stated his final premise, but before stating his conclusion, Judge Storer leaned over the rostrum, with his crooked index finger and stated the conclusion: Mat-

thews said, *"I did not say that,"* and Judge Storer said, *"But you were just about to say it,"* and Judge Matthews replied, *"If your* Honor knows *what I am about to say,* then it is useless for me to proceed further;" but after some explanations he continued in the argument.

Another time I passed into the same general term, when Timothy Lincoln and Edgar M. Johnson were presenting a case to the Court, and Mr. Johnson had cited some authority in one of the Ohio Supreme Court Reports, and Lincoln, holding the volume in his hand, said to the Court—(and I remember how he said it, with his large stomach protruding over the table—for he was a powerful man physically as well as mentally)— "If your Honors find anything in this decision applicable to the case at bar, *I will agree to eat the book.*" "Oh, well," said Johnson, "the Court will take judicial notice that you are hog enough to eat anything." (Laughter.) I have told that incident just because it illustrated some of our Court proceedings; it is not intended as any criticism, or to sanction any criticism of Mr. Lincoln or Mr. Johnson.

In latter days, when I was on the bench, we were trying to a jury a case where Mr. Robert Fulton was for the plaintiff and Judges Guthrie and Yaple were for the defendant. The presence of Mr. Fulton here tonight reminds me of the details of the case. Fulton was persistent in his cross-examination of the defendant to produce a supplemental agreement, which he claimed his client had made with the defendant, and with all his eyes he was peering at the pocket of the defendant, which was bulging with documents; he pressed him, and pressed him, until Judge Guthrie became impatient and restless at the spirited indictment of his client, and generously said to his client on the witness stand, "Just deliver the papers in that pocket to Mr. Fulton and let him pick out any paper that he can find there." And Fulton very promptly accepted the proposition, and found among those papers the supplemental agreement which Judge Guthrie's client had denied he had. Of course, that testimony immediately won him the verdict of the jury. I shall never forget Judge Guthrie's argument on the motion for a new trial. He closed saying, "There is another

reason, we were confronted with a live, energetic young man, and the defense was represented by two, old broken down ex-judges." (Laughter.) It is a late hour, but I can not close this brief reminiscence without mention of Judge Hoadly. He was not a specialist in the practice of the law—he was a general practitioner—active from morning until night, as I believe no other man at this bar seemed to be, and yet he was a lecturer in the law school; he was interested in and always a willing counsellor to young men at this bar, I don't believe any one of this bar has passed away so generally, kindly and sympathetically remembered as Judge Hoadly. (Applause.)

Your exceeding patience and attentive listening reminds me of a lecture I heard by Wendel Phillips, in Pike's Opera Building, many years ago, when he said in substance that it took far greater intelligence and ability to be a good listener, than it did to be a good speaker.

You have tonight attested the wisdom of that statement, for you have been the most attentive listeners through this whole ceremony it has been my good fortune to know.

President Pogue—Governor Harmon has told you of the existence of the Junior Bar, and of the fact that certain members of it still survive. The last speaker on our program for the night is one of these survivors. When we began to look in Who's Who in the official book of the Court House, we could not find any record of his birth. Probably, he can tell you how long or how short a time ago it was. From his physical activity, as we all know him, he will be charged with being on of the members of the Junior Bar, although a survivor of fifty years ago. I am sure it will be a pleasure to hear from Charles B. Wilby. (Applause).

ADDRESS OF
HON. CHARLES L. WILBY

Mr. President and Brethren of the Bar:

It is quite fitting that we should celebrate this occasion. We have good reason to be proud of the old Bar of Cincinnati. The names of those great men, some of whom have been mentioned, are household words in this community. As evidence of the estimation of the Cincinnati Bar by the country at large, I will mention two historical facts that are often overlooked.

At the only trial of a President of the United States for impeachment, two Cincinnati lawyers were leading counsel on each side. Henry Stanbery represented the Government as Attorney-General of the United States, and William S. Groesbeck represented the defendant.

Also, there was the case of Tilden vs. Hayes, before the Electoral Commission, the greatest lawsuit the world ever saw, for on the outcome of that suit depended the chief magistracy of the greatest country in the world. No other law-suit has ever involved so much. In that great contest two Cincinnati lawyers, George Hoadly and Stanley Matthews, were among the counsel actively engaged.

Furthermore, we have reason to be proud of the Cincinnati Bar Association, not only for what it has done, but from the fact that it is the oldest bar association west of the Allegheny Mountains. I believe there was one other organized a year earlier, but it died and had to be revived, while our Association has never lost its vigor and vitality since the day it was born.

When this Association was organized in 1872, there were about 387 members of the bar in Cincinnati. Our last directory shows over 950 lawyers. Instead of twenty-two judges who now sit in Cincinnati, there were only eight judges and four justices of the peace until 1871, when the number of Common Please Judges was increased from three to five, so that there

were at the time of the formation of the Association, ten judges, five Common Pleas, three Superior Court, one Probate and one Police Judge.

The judges of the Superior Court sat in General Term to review the decisions of that court, and three of the judges of the Common Pleas Court sat as a District Court to review its decisions.

The Superior Court was a great court. Gholson, Spencer and Storer had made its decisions valued throughout the State. Gholson and Spencer were succeeded by Alphonso Taft and Marcellus B. Hagans, who, with Justice Storer, composed that bench until early in 1872, when Storer and Taft resigned, and by appointment their places were filled by John N. Miner and J. Bryant Walker, who was the son of Judge Timothy Walker, who wrote "Walker's American Law," and, with Judge Bates, J. Bryant Walker made the first good Ohio Digest. Neither Miner nor Walker were re-elected, and their places were filled by Judges Alfred Yaple and Timothy O'Connor.

The Common Pleas Court up to 1872 was composed of Manning F. Force, Charles Murdock and Joseph Cox. Late in 1871 Judges Avery and Burnet were added to that bench. The Common Pleas Court in those days was also a great court. The judges were allowed to serve term after term, and in every year of their service their usefulness and efficiency were increased. There are some lawyers here who have influence with the powers that be, and that influence should be used to keep on the bench as long as possible every good man who is willing to continue to serve. In the old days judges of either party were sometimes returned without opposition from the opposing party. This was the case with Judge Force and Judge Avery. Judge Force served on the Common Pleas bench for ten years, and afterward was elected to the Superior Court bench. Judge Murdock and Judge Cox each served for fifteen years. Judge Avery served thirteen years and Judge Burnet eleven years.

When this Association was organized the Probate Judge was George F. Hoeffer, whose red necktie is particularly bright in my memory. He was succeeded by William L. Tilden, who served only a few months, and Albert Paddack, who had been

the issuing deputy or chief clerk, was appointed and served until the next election, when Isaac B. Matson, who had been the partner of Tom Paxton, was made Probate Judge, and as such gave good service for many years, his term of service being longer than that of any other Probate Judge except Judge Lueders.

The judges of the Supreme Court then were McIlvaine, Welsh, White, Day and West. They were all great lawyers. Judge McIlvaine had a clear and hard head. It is said of him that one morning, after a banquet which the court had attended, when he went into the consultation room before going on to the bench, one of his colleagues, knowing that he had not refused the night before to look upon the wine without reference to its color, remarked on his good appearance, and said, "You look all right this morning, Judge." "Oh, yes," said McIlvaine, "I am all right; I issued a *scire facias* to revive my judgment."

The first Recording Secretary of the Bar Association was Israel Ludlow, the grandson of the original settler Israel Ludlow. He had a tall commanding figure and was beloved by every one who knew him. Weak lungs compelled him to go to San Antonio shortly after the organization of the Bar Association, and his place of Recording Secretary was taken by Dana Horton.

Dana Horton was the brother-in-law of Judge Force, and son of Valentine B. Horton, of Pomeroy. He was a man of fine presence, tall and well proportioned, and no one who ever heard him sing can forget his charming voice. In those days, when the Bar Association was small, some of us used to get together after the business meeting, and tell stories and sing songs. Thornton Hinkle always had some good songs, and Dana Horton often brought down the house with his song beginning:

"On the first day of March it was, some people say
That St. Patrick at midnight first saw the day,
While others declared it was the ninth he was born
And 'twas all a mistake between midnight and morn.
For mistakes will occur in a hurry and shock,
And some blamed the baby and some blamed the clock,
Yet with all their cross questions, sure no one could know
If the clock was too fast or the baby too slow."

and then, after describing the faction fights in Ireland over that controversy, his song went on:

> "And Father Mulcahey, who showed them their sins,
> Said 'No one could have two birthdays, barring twins.
> Boys, don't always be fighting, but sometimes combine,
> Combine eight with nine and seventeen is the mark,
> So let that be his birthday.' 'Amen,' said the clerk."

When this Association was organized we had no regular reports of the decisions of our local courts. The Weekly Law Bulletin did not begin until 1876. The decisions of the Superior Court had been reported by Handy & Disney, and in 1870 and 1871, Charles P. Taft and Bellamy Storer edited the first volume of the Cincinnati Superior Court Reporter. In 1872 and 1873, Charles P. Taft and his brother, Peter R. Taft, edited the second volume of that useful series.

Few of you knew Peter R. Taft. He was the valedictorian of the Class of 1867 at Yale, and was a very studious and learned lawyer, but his health broke down and his mind gave way under the strain of continuous hard work. An example of this is his remarkable brief in the case of Levy vs. Earl, decided by the Supreme Court in 1876, involving the question of the liability of a married woman's separate estate for her contractual obligations. The report of that case gives a summary of the brief of A. Taft and Sons, written by Peter R. Taft, for the defendant in error. That brief was an exhaustive treatise on the subject.

Other than those reports of the Superior Court, there was no other record of our local decisions except that made by the then Court reporter of the Commercial, an Englishman named Shinkwin who had been a solicitor or barrister in England. His court reports, published for many years in that paper, were an intelligent record of what the local courts were doing, and many lawyers at that time preserved them. I have in a scrap book Shinkwin's reports carefully indexed, which for some years was almost a necessary part of a Cincinnati Law Library.

In 1876 a provision was made for a sub-organization of the younger members of the bar, the object of which was perhaps something like the Lawyer's Club which we have today. A committee was appointed for the purpose of preparing a plan for

that sub-organization, and submitted its report in January, 1876, in which the object of the sub-organization was said to be "the better acquaintance and mutual improvement of its members by the discussion of such questions of law as can be reached without the details of pleading and evidence, and such literary exercises as may be deemed advisable." The name was to be "The Junior Branch of the Cincinnati Bar Association." That report was unanimously adopted, but I can remember nothing about the sessions of that Junior Branch; I think it soon died and was forgotten.

Our Bar Association has accomplished much good. The Committees on Grievances and Investigation have produced results in some cases noteworthy and of great benefit. The Committees on the Judiciary and Legal Reform have left traces of their good work throughout our statutes, and with these examples we can hope that the association in the future will continue those valuable services to the bar and to the community.

(Applause.)

President Pogue—It is a delight to those who have had the good fortune to hear the remarks of our distinguished guests on this golden anniversary of the Cincinnati Bar. Every one will leave this meeting feeling that he had been well rewarded for his attendance and will carry the recollection of it throughout their remaining days.

As there is nothing further before the Association it will, therefore, stand adjourned.

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